

# RFK Barred Bugging in 1962 Memo

Banned by Hoover  
In '28, and Several  
Attorneys General

12/15/66  
By Richard Harwood  
Washington Post Staff Writer

As Attorney General of the United States in 1962, Robert F. Kennedy issued an unpublicized directive to FBI Director J. Edgar Hoover and other Justice Department officials prohibiting "improper, illegal and unethical" investigative practices.

The existence of the directive was confirmed yesterday by Justice Department sources, and the evolution of the Department's eavesdropping policies was reconstructed for the first time.

The Kennedy directive was described as "vague" in its specific prohibitions but its language was broad enough to outlaw eavesdropping devices of the type the FBI was then using and which it continued to use on a broad scale at least until 1965.

## Security Exceptions Made

It spelled out only one exception to the general prohibition against illegal practices: wiretapping was permitted in "national security" cases.

Neither Kennedy nor the FBI had any comment yesterday on the intent or effect of the directive. Some of its wording was said to be similar to a directive Hoover himself had issued in 1928 and had incorporated into the FBI Manual of Rules and Regulations: "Wiretapping, entrapment, or the use of any illegal or unethical tactics in procuring information will not be tolerated by the Bureau."

In subsequent years, Hoover

reiterated this policy, describing wiretapping as an "archaic and inefficient practice . . . which has proved to be a definite handicap or barrier in the development of ethical, scientific and sound investigative technique."

## Firing Threatened

At one point, years ago, he told Congress that "any employee engaged in wire-tapping will be dismissed from the service of the Bureau. . . . While it may not be illegal, I think it is unethical, and it is not permitted under the regulations by the Attorney General."

Similar policy statements were made by the FBI throughout the 1930s, although there was substantial evidence in those years that wiretaps were being used by Bureau agents.

On March 15, 1940, in response to congressional criticism, Attorney General Robert H. Jackson issued a total prohibition against wiretapping. The FBI was given

See BUG, A9, Col. 1

two weeks to discontinue the practice.

Shortly, however, Jackson's directive was overruled by President Roosevelt, who issued an executive order permitting wiretapping in exceptional cases, such as "national security."

Those conflicting documents — the Jackson directive and Roosevelt's executive order — remained in the Justice Department files for years as the only official policy guides to what was, and what was not, permissible practice.

During these years a series of court decisions on wiretapping and eavesdropping created a legal thicket in which certain electronic espionage techniques were outlawed and others were legalized.

To meet this new situation, Attorney General Herbert Brownell in 1954 issued a new policy memorandum on wiretapping and eavesdropping. Its contents have never been made public but it is described, authoritatively, as a detailed and explicit document that Hoover has relied upon heavily for his authority to use electronic devices.

In 1958 or 1959, Justice Department sources revealed, Attorney General William Rogers requested that still another policy directive be prepared.

## Project Languished

For unexplained reasons, the project languished. In the meantime, under the authority of the 1954 directive, electronic espionage came to be widely used by the FBI. As of

Feb. 8, 1960, the Bureau was monitoring 78 wiretaps in "national security" cases and 67 electronic "bugs" in "internal security" and "organized crime" cases.

This practice was known to high officials of the Department after Kennedy took office in 1961 and was the subject of internal memoranda within the Department, some of which Hoover made public last weekend in the angry dispute with Kennedy over the FBI's authority to eavesdrop.

By 1962, Kennedy's men had prepared a new policy directive on investigative practices to supersede the Brownell directives of 1954. It was couched in general rather than specific terms and laid down general rather than specific guidelines. But its prohibition against "illegal" practices was reportedly unequivocal.

(The directive itself has not been released and is not regarded as a "public" document, the Justice Department said.)

In any case, it was an established principle of law by 1962 that eavesdropping involving a physical trespass violated the Fourth Amendment to the Constitution. Eavesdropping of that nature was thus presumably explicitly prohibited by the Kennedy directive.

#### Practice Continued

But the practice nevertheless continued as both the FBI and the Justice Department have since admitted. "Bugs" were planted through trespass in numerous locations in Las Vegas, Washing-

ton, Miami, Milwaukee, Youngstown, Ohio, and other cities after the Kennedy directive took effect.

(Kennedy said last night that he was unaware of the existence of the Brownell document when he drafted his 1962 order and has still never seen it. If the FBI relied on Brownell guidance on eavesdropping, Kennedy said, the Bureau should have informed him what that guidance was, and how it was being interpreted.

(Brownell was unavailable for comment.)

On June 30, 1965, Nicholas deB. Katzenbach, who had succeeded Kennedy as Attorney General, issued still another order on the subject of wiretapping and eavesdropping.

He again limited wiretapping to "national security" cases and required prior approval from the Attorney General for the use of any eavesdropping devices. Illegal "buggings" were specifically prohibited. Electronic "bugging" techniques that have not been outlawed by the courts, however, presumably are still permitted.

#### Hoffa Group Offers Reward on 'Bugging'

A committee which includes a dozen Teamster officers and members offered a \$100,000 reward yesterday for information leading to proof that wiretaps and "bugs" had tainted the prosecution of Teamster President James R. Hoffa in recent years.

Teamster officials said other efforts included formal re-

quests to the FBI and the Justice Department to confess that electronic listening devices were used in the drive to convict Hoffa. The Department and FBI said they did not comment on such statements.

The immediate Teamster objective is to find some way to upset Hoffa's jury-tampering conviction and eight-year prison term that were upheld Monday by the Supreme Court.